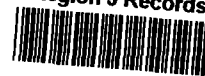




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



242277

AUG 04 2005

REPLY TO THE ATTENTION OF:

**Lindsay Light II Site
05YT OU-06**

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kerr-McGee Chemical LLC
c/o J.T. Smith II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566

RE: General Notice of Potential Liability
and Presence of Lindsay Light II Offsite Contamination
Lindsay Light II Site - Operable Unit 06
245 E. Ohio Street, Chicago, Illinois

Dear Mr. Smith:

On September 29, 2000, as part of an investigation of the Lindsay Light II Site, the United States Environmental Protection Agency, Region 5 ("U.S. EPA") conducted a radiological survey of portions of the 245 E. Ohio Street property and discovered elevated levels of gamma radiation indicating buried radioactive materials. Subsequent sampling of the buried contaminated materials confirmed the presence of radioactive thorium at this property. U.S. EPA has documented the release or threat of release of this hazardous substance, radioactive thorium, into the environment from the property located at 245-253 East Ohio Street, 242-256 East Grand Avenue, Chicago, Illinois and is planning to spend public funds to investigate and oversee the removal of the radioactive thorium from this property. U.S. EPA will take these response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("SARA").

Your client, Kerr-McGee Chemical LLC, is a successor to the Lindsay Light and Chemical Company which operated a monazite processing and gas light mantle manufacturing facility that generated thorium wastes found at several nearby Lindsay Light I (161 E. Grand) and Lindsay Light II Sites (including 316 E. Illinois a.k.a. River East; 227 N. Illinois a.k.a. Grand Pier/ OU 1; 341 E. Ohio a.k.a. Teacher's Retirement System/OU 3; 319 E. Illinois a.k.a. HBE/OU 7; N. Peshtigo and McClurg Court a.k.a. Kraft/OU 10). Given the nature of the contamination, the proximity of this location to the Lindsay Light II Sites and the historic use of fill in this area,

U.S. EPA believes that the thorium at this property is offsite contamination associated with the nearby Lindsay Light II Site. Your client is also a Respondent to U.S. EPA's June 6, 1996, Unilateral Administrative Order, Docket No. V-W-96-C-353 ("UAO" or "Lindsay Light II UAO") issued to Kerr-McGee et al. The UAO at Section V., Paragraph 3. g. requires Kerr-McGee to conduct offsite investigation and cleanup of wastes as necessary.

The current owner of the property located at 245 E. Ohio Street is working with a prospective purchaser and developer, Fairbanks Development Associates, to conduct a removal action at this property during the remaining 2005 construction season. U.S. EPA is currently planning to conduct oversight and radiation verification activities at the property during the removal action. The owner and developer have told U.S. EPA that Kerr-McGee has indicated a willingness to take responsibility for the transportation and disposal of any thorium contamination removed from this property.

Under Section 107(a) of CERCLA, where U.S. EPA uses public funds towards the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the facility, including investigation, planning, and enforcement costs. Responsible parties under CERCLA include the current and former owners and operators of the facility, persons who generated the hazardous substances, and persons who were involved in the transport, treatment, or disposal of the hazardous substances at the facility.

CERCLA also contains conditional liability protection for certain landowners who qualify as innocent landowners. According to documentation provided by on behalf of the current property owners, legal title to 245 E. Ohio is held by LaSalle Bank N.A. as Trustee Under Trust Agreement Dated October 27, 1976, and known as Trust Number 39369. The beneficiaries of Trust Number 39369 acquired this property by bequest or inheritance from the estate of Henry R. Levy who died in 1971. The named beneficiaries of Trust Number 39369 are the current owners. Alfred E. D'Ancona and Lawrence R. Levin, trustees of the Alfred E. D'Ancona III Trust, u/w/o Henry R. Levy and Alfred E. D'Ancona III and Terri R. D'Ancona, trustees of the H. Richard D'Ancona Children's Trust, dated June 3, 1994, ("D'Ancona Trust") and the prospective purchaser, Fairbanks Development Associates, have each asserted defenses to CERCLA and submitted information in support of their respective claims. Specifically, the D'Ancona Trust has provided documents to establish a third party defense under CERCLA Section 107(b)(3) in conjunction with Section 101 (35)(A) (iii). D'Ancona has submitted documents to show it acquired the property by bequest without knowledge of the contamination. Fairbanks Development Associates is seeking to avoid liability by following procedures to qualify as a bona fide prospective purchaser in accordance with CERCLA Section 107(r) and CERCLA Section 101(40) criteria.

By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you to reimburse U.S. EPA for costs incurred to date and to work with the property owner and developer to voluntarily perform or finance certain response activities which

U.S. EPA has determined or will determine are required at the facility. Under Sections 106 and 107 of CERCLA, you may be liable for reimbursement of U.S. EPA's costs, for statutory penalties, and for treble damages for noncompliance with the 1996 Lindsay Light II UAO.

Because of the conditions described above, U.S. EPA believes that response activities at the Lindsay Light II Site Operable Unit 06 must be initiated as quickly as possible. Therefore, U.S. EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

As a Respondent to the 1996 Lindsay Light II UAO and a potentially responsible party, you should notify U.S. EPA in writing within fifteen days of receipt of this letter of your willingness to perform or finance and to reimburse U.S. EPA for its costs. Your response should be sent to:

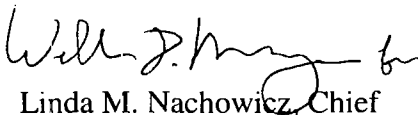
Debbie Regel
U.S. EPA - Region 5
Emergency Enforcement & Support Section, SE-5J
77 West Jackson Boulevard
Chicago, IL 60604-3590

If U.S. EPA does not receive a timely response, U.S. EPA will assume that Kerr-McGee does not wish to negotiate a resolution of its potential responsibility in connection with the facility and that your client has declined any involvement in performing the response activities. Your response should indicate the appropriate name, address, and telephone number for further contact with you.

If you need further information regarding this letter, please contact Cathleen Martwick, Associate Regional Counsel (312) 886-7166.

Due to the nature of the problem at this property and the attendant legal ramifications, U.S. EPA strongly encourages you to submit a written response within the time frame specified herein. We hope you will give this matter your immediate attention.

Sincerely yours,



Linda M. Nachowicz, Chief
Emergency Response Branch

cc: Thomas R. Carey, Esq.
Bell Boyd & Lloyd LLC
70 W. Madison Street, Suite 3100
Chicago, IL 60602

Wilson P. Funkhouser, Esq.
Funkhouser, Vegosen Liebman & Dunn Ltd.
55 W. Monroe Street, Suite 2410
Chicago, IL 60603

bcc: Cathy Martwick, ORC (C-14J)
Mary Fulghum, ORC (C-14J)
Gene Jablonowski, FFRS, (SR-6J)
Verneta Simon, OSC (SE-5J)
Larry Jensen, FSS (SMF-4J)
John Maritote, EESS (SE-5J)
Debbie Regel, EESS (SE-5J)
Denise Battaglia, Public Affairs (P-19J)
Michael T. Chezik

Department of Interior, 200 Chestnut St., Room 244, Philadelphia, PA 19106

Alicia Corley, SETS (OS505)
Linda Haile, PAAS (MF-10J)
Records Center (SMR-7J)

Lindsay Light II Site
05YT OU-06

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chr 7/25/05	glt/06			MLA						
ES	OSC	RS CHIEF	EESS CHIEF	ORC	ORC CHIEF	ERB CHIEF	ENF COORD	SFD Director	RA	

**REMOVAL PROGRAM
NOTICE LETTER
ROUTING SLIP
(REVISED MAY 2004)**

LINDSAY LIGHT II SITE/OU6 245 EAST OHIO
(SITE NAME)

**Please sign the Yellow and check your name off this page.
Then pass the document on to the next name.
Do not sign this page, SIGN THE YELLOW**

	NAME	MAIL CODE
1. ERB ENFORCEMENT SPECIALIST	<u>Debbie Regel</u> ✓	<u>SE-5J</u>
2. ERB ON-SCENE COORDINATOR	<u>Verneta Simon</u> ✓	<u>SE-5J</u>
3. EESS SECRETARY	<u>Akimi Cheng</u> ✓	<u>SE-5J</u>
4. ORC STAFF ATTORNEY	<u>Cathy Martwick</u>	<u>C-14J</u>
ORC STAFF ATTORNEY	<u>Mary Fulghum</u> ✓	<u>C-14J</u>
5. EESS SECRETARY	<u>Akimi Cheng</u>	<u>SE-5J</u>
6. EESS SECTION CHIEF	<u>Bill Messenger</u> ✓	<u>SE-5J</u>
7. ERB BRANCH SECRETARY	<u>Cynthia Beck</u>	<u>SE-5J</u>
8. ERB BRANCH CHIEF	<u>Linda Nachowicz</u> ✓	<u>SE-5J</u>
9. RETURN TO SE-5J/EESS SECRETARY FOR MAILING TO PRPs AND DISTRIBUTION OF BCC LIST.		

DATE MAILED TO PRPs: AUG 04 2005